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SPEAFFER JEANNE M
78 MONTEVIDEO 1203

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ACTION ARA-14

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FM AMEMBASSY MONTEVIDEO

TO SECSTATE WASHDC IMMEDIATE 6228

INFO AMEMBASSY ASUNCION

AMEMBASSY BRASILIA

AMEMBASSY BUENOS AIRES

AMEMBASSY SANTIAGO

USCINCSO QUARPY HTS CZ

UNCLAS SECTION 1 OF 3 MONTEVIDEO 1203

E.O. 11652: N/A

TAGS: SHUM, UY

SUBJECT: RELEASE OF ARA VISIT MEMORANDUM AND GOV RESPONSE

REFS: (A) MONTEVIDEO 1192 (NOTAL), (B) MONTEVIDEO 1192

(DTG 081652Z APR 78)

1. FOLLOWING IS EMBASSY TRANSLATION OF INITIAL GOV
RESPONSE TO THE ARA AIDE MEMOIRE, SPANISH TEXT OF WHICH
WAS TRANSMITTED REFTTEL:

QUOTE. THE ARMED FORCES CONSIDERS IT NECESSARY TO TELL
THE URUGUAYAN PEOPLE THAT THE VISIT OF DRS. BUTLER AND
REQUE WAS IN RESPONSE TO A REQUEST MADE BY THE AMERICAN
BAR ASSOCIATION THAT TWO OF THEIR REPRESENTATIVES MIGHT
VISIT URUGUAY IN ORDER TO LEARN AND INFORM THEMSELVES
REGARDING THE SITUATION OF CERTAIN URUGUAYAN PROFESSIONALS
SUBMITTED TO JUSTICE, A REQUEST WHICH THE GOVERNMENT
ACCEPTED COMPLETELY AT THE MOMENT.

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THAT (ACCEPTANCE) WAS UNDERSTOOD TO CONVEY THE NATIONAL
FEELING OF CONTINUAL READINESS FOR FRANK AND OPEN DIALOGUE
TO DISCUSS ANY SUBJECT, NO MATTER HOW COMPLEX IT MIGHT BE
AND, AT THE SAME TIME, TO FULFILL THE ELEMENTARY COURTESY
OF ATTENDING TO A RESPECTFUL VISITOR WHO WISHES TO KNOW THE
NATIONAL REALITY.

THE ANALYSIS OF THE INTRODUCTION TO THE "MEMORANDUM"
DEMONSTRATES THE UNDERSTANDING THAT THE ABOVE NAMED JURISTS
HAVE OF THE ATTITUDE OF THE ARMED FORCES, IN THAT THE
CULTURAL BACKGROUND OF THE URUGUAYAN PEOPLE AND THE RICH
JURIDICAL TRADITION OF THE COUNTRY, AS WELL AS ITS HISTORIC
TRAJECTORY, ARE QUALIFIED TO A SUFFICIENT KNOWLEDGE AND
EXPERIENCE TO MAINTAIN THAT HAS HAPPILY DONE, IN A PER-
MANENT AND CONTINUOUS INDEPENDENT RULE OF LAW,
LEGAL PROFESSION AND JUSTICE IN URUGUAY.

ALTHOUGH THE SUBSTANCE OF "MEMORANDUM" PERTAINS

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DEPARTMENT OF STATE A/CDC/MR	
REVIEWED BY <i>J. Han</i>	DATE <i>8/29/82</i>
RDS ☐ or XCS ☐	EXT. DATE
TS AUTH.	REASON(S)
ENDORSE EXISTING MARKINGS ☐	
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PA or FCI EXEMPTIONS	

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TO THE INTERNAL JURISDICTION OF THE COUNTRY AND, CONSEQUENTLY, FALLS WITHIN ITS SOVEREIGN POWER, THE PRESERVATION OF WHICH IS THE FUNDAMENTAL MISSION OF THE ARMED FORCES, BECAUSE OF WHAT WAS NOTED ABOVE, THE ARMED FORCES DECIDED TO PUBLISH IT AND RESPOND TO IT IN AN APPROPRIATE WAY.

IN THE MATTER OF THE TREATMENT OF PRISONERS, THE RECOMMENDATIONS EXPRESSED HAVE NO UTILITY IN FACT, URUGUAY HAS RATIFIED THE "INTERNATIONAL COVENANT ON CIVILIAN AND POLITICAL RIGHTS", ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY ON DECEMBER 16, 1966; THEREFORE, A REAFFIRMATION OF INTENTION TO FULFILL SOME OF ITS PROVISIONS IS ONLY A REITERATION WITHOUT MEANING. THE ENFORCEMENT AND EFFECTIVENESS OF ALL THE PROVISIONS CONTAINED IN THE ABOVEMENTIONED COVENANT WERE GUARANTEED MANY YEARS BEFORE ITS EXISTENCE, AS THEY STILL ARE, BY THE INTERNAL JURIDICAL ORDER OF URUGUAY, AN ORDER WHICH

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ALSO TAKES INTO ACCOUNT ADEQUATE LEGAL TERMS FOR THE SANCTION OF ANY GOVERNMENT AGENT WHO DEPARTS FROM THE STRICT FULFILLMENT OF HIS DUTIES IN THE ARREST AND DETENTION OF PERSONS. AT THE ADMINISTRATIVE AND THE JURIDICAL LEVELS, THERE IS AN UNBROKEN LINE OF PRECEDENTS WHICH IS FLOQUENT PROOF OF SUCH CONCERN.

WITH REFERENCE TO THE EXTENSION OF MILITARY JURISDICTION, IT WAS ESTABLISHED BY THE LAW FOR THE SECURITY OF THE STATE NO. 14,062 BECAUSE, WHEN NECESSARY, ONE MUST RESORT TO EXTRAORDINARY MEASURES TO SAFEGUARD THE EXISTENCE OF THE STATE. IN ORDER TO MAINTAIN A JURIDICAL ORDER, THERE MUST ALSO BE A STATE, SINCE IF THE STATE DISAPPEARS, SO DOES THE JURIDICAL ORDER ONE WISHES TO PROTECT.

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BECAUSE OF THE CRISIS WHICH BEGAN IN THIS COUNTRY,
EMERGENCY LEGISLATION WAS NECESSARY, EXTENDING TO THE MILITARY
JUSTICE SYSTEM JURISDICTION OVER CRIMES AGAINST THE NATION,
AGAINST THE STATE IN CRISIS AND, THEREFORE, AGAINST
ALL JURIDICAL ORDER.

IN ANY PERIOD OF CRISIS THERE IS AN EMERGENCY
LEGALITY WHICH CANNOT BE THE LEGALITY OF NORMAL TIMES,
AND THIS IS THE SITUATION FROM WHICH THIS COUNTRY HAS
NOT YET EMERGED, THOUGH THERE HAVE BEEN EFFECTIVE STEPS
TOWARD THAT END.

WITH RELATION TO OTHER ASSERTIONS MADE IN THE
"MEMORANDUM", IT IS APPROPRIATE TO EXPRESS THE FOLLOWING:

-ALL THE CASES IN THE SUMMARY STAGE OF INDICTMENT
REFER TO DETAINED PERSONS WHO HAVE CRIMINAL LIABILITY FOR
THEIR ACTS OR OMISSIONS. THERE IS NO INDICTMENT IF THERE
IS NOT FULL CAUSE AND COMPLAINT OF THE INDIVIDUAL'S HAVING
COMMITTED A CRIME. IF THIS FULL CAUSE AND COMPLAINT IS
NOT CONFIRMED, THE PERSON IS NOT INDICTED, THEREBY IMMEDIATELY
CLOSING THE PROCEEDINGS AND FREEING THE DETAINEE. MOREOVER,

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IN ALL CASES THERE IS LEGAL RECOURSE WHICH PREVENTS PERSONS
REMAINING DETAINED, WHEN THERE IS INSUFFICIENT PROOF.

--THERE ARE NO DETAINED PERSONS UNDER MILITARY JURIS-
DICTION WHO ARE NOT DIRECTLY IMPLICATED IN SUBVERSIVE ACTIVITIES
OR MILITARY CRIMES; THEREFORE, THERE CANNOT EXIST THE HYPO-
THESIS OF LIBERATING 500 PERSONS IN THE PERIOD OF EIGHT
MONTHS WHO ARE DIRECTLY TIED TO IN SUBVERSION. THE FIGURES
ON THE LIBERATION OF DETAINED PERSONS IN 1977 AND 1978 THAT
ARE MENTIONED IN THE "MEMORANDUM" ARE EXACT, BUT ALL THOSE
PERSONS WERE SUBVERSIVES WHO HAD A LESSER DEGREE OF
CRIMINAL RESPONSIBILITY AND, AFTER THOROUGH ANALYSIS OF
EACH CASE BY THE MILITARY JUSTICE ORGANS, IT WAS
DECIDED TO FREE THEM.

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--RECOURSE TO "HABEAS CORPUS" HAS FUNCTIONED NORMALLY DURING THE ENTIRE EMERGENCY PERIOD THAT THE COUNTRY HAS LIVED THROUGH. THERE ARE MANY CASES PRESENTED THE MILITARY JUSTICE SYSTEM WHICH HAVE RECEIVED APPROPRIATE HEARINGS. BUT WHEN PERSONS HAVE BEEN DETAINED UNDER THE (EMERGENCY) SECURITY MEASURES, SUCH RECOURSE WAS NOT APPLICABLE. THIS HAS BEEN THE COMMON JURISPRUDENCE OF ALL CIVILIAN AND MILITARY TRIBUNALS OF THE NATION FOR MANY YEARS.

--THERE IS NO ISSUE OF THE ARREST AND INDICTMENT OF LAWYERS FOR THE FULFILLMENT OF THEIR FUNCTIONS, SINCE THERE NEITHER ARE NOR EVER HAVE BEEN SUCH CONCRETE CASES IN URUGUAY. REFERRING TO THOSE OF DRS. SCHURMANN PACHECO, JUAN JOSE FRAGA AMOROSO, FUGA FABRI AND EMILIO BIASCO, IT SHOULD BE MENTIONED THAT THEY WERE INDICTED BECAUSE THEY WERE CHARGED BY THE COMPETENT JUSTICE SYSTEM WITH CRIMES EXPRESSLY PROSCRIBED BY THE MILITARY PENAL CODE, WITHOUT REFERENCE TO THEIR PROFESSION. IN ITS PREFERENCE TO THE RESTORATION OF THEIR RIGHTS TO PRACTICE LAW, THE ORGANIZATIONAL CODE OF THE TRIBUNALS ESTABLISHEDS THAT,

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IN THE CASE OF INDICTED LAWYERS, THEIR PRACTICE IS TO BE PREVENTIVELY SUSPENDED BY THE COURT OF JUSTICE (ARTICLE 229, PARAGRAPH 3). IF THE INDICTED AND SUSPENDED LAWYER REQUESTS FROM THE COURT THE RESTORATION OF HIS PROFESSIONAL FRANCISE, THE COURT CAN GRANT IT INSOFAR AS IT DOES NOT INJURE THE DIGNITY OF THE PROFESSION. BUT, NATURALLY, TO OBTAIN THIS RESOTRATION THERE MUST BE AN EXPRESS PETITION FROM THE SUSPENDED LAWYER (ARTICLE 229); THE COURT CANNOT RESTORE IT "EX OFICIO" SINCE IT WOULD CERTAINLY INJURE THE LAWYER'S RIGHTS TO OBLIGE HIM TO PRACTICE A PROFESSION WHICH HE DOES NOT WISH TO CONTINUE.

--WITH RESPECT TO INSTITUTIONAL ACT NO. 8, WHICH REFORMS THE JUDICIARY, IT IS IMPORTANT TO STATE THAT THIS DECREE IS NOT A CAPRICIOUS CREATION, BUT ONE THAT HAS MODERN LEGAL ANTECEDENTS, IN PARTICULAR, THE PHILOSOPHY OF FUNDAMENTAL CHARTERS IN FORCE WITH VERY POSITIVE RESULTS IN DIFFERENT WESTERN NATIONS. MOST ESPECIALLY, IN THE CONSITUTION OF FRANCE OF 1958, THE OLD CONCEPTION OF THE JUDICIAL POWER WAS REPLACED BY A FORMUAL, WHICH --BECAUSE OF ITS EFFICIENCY-- IS IMPORTANT TO TRY OUT IN A TRANSITION PERIOD SUCH AS THE ONE IN WHICH WE ARE PRESENTLY LIVING, ADAPTING IT AS APPROPRIATE. IT IS A TENTATIVE AND EXPERIMENTAL FORMULA, LEADING TOWARD A PERFECTED AND PURIFIED INSTITUTIONAL STRUCTURE WHICH WILL SOON BE RATIFIED, IN THE NEW CONSTITUTION, BY THE REPUBLIC. IN THIS SENSE, NATURALL, A DIALOGUE IS ACCEPTABLE IN THE FACE OF REALITIES WHICH AID IN ITS SERIOUS FORMULATION.

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--THE ARMED FORCES SHARE, WITHOUT RESERVE AND

WITH SPECIAL EMPHASIS, THE CONCEPTS THAT ARE EXPRESSED IN

THE PARAGRAPH RELATING TO THE SCHOOL OF LAW IN THE PRE-

SENTED "MEMORANDUM". FOR THAT, IT IS ENOUGH TO REFER TO

THE JUDGMENT OF PUBLIC OPINION WHICH, CERTAINLY, HAS NOT

FORGOTTEN THE EXPERIENCES UNDERGONE IN THE UNIVERSITY

OF THE REPUBLIC IN VERY RECENT TIMES, IN WHICH THE FREEDOM OF

THE PROFESSORS, THE FREEDOM OF TEACHING AND THE INBORN

RIGHT TO LEARN, WERE DISTORTED AND VIOLATED BY A CLIMATE OF

VIOLENCE AND ANARCHY WHICH TOUCHED EQUALLY BOTH PROFESSORS

AND STUDENTS.

BECAUSE, NO DOUBT, THERE MUST REMAIN THE MEMORY

OF THOSE STILL RECENT TIMES, OF THE EXPULSION OF THE MOST

ILLUSTrious AND INTERNATIONALLY-FAMOUS PROFESSORS, OF THE

"ANTI-COURSES" AND THE "DE-UNICINIZATIONS" AND ALL SORTS OF

VIOLENT AND FOREIGN-INSPIRED IDEOLOGICAL MANIFESTATIONS.

IT WAS PRECISELY UPON THE OVERCOMING OF ALL THESE

EVILS THAT STUDENTS AND PROFESSORS WERE PERMITTED TO FEEL

FREE TO ATTAIN THEIR ACADEMIC GOALS.

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IN CONCLUSION, REITERATING THAT THE GUIDING OF A

STATE IS THE EXCLUSIVE DOMAIN OF ITS AUTHORIZED OFFICIALS,

AS AN EXPRESSION OF ITS SOVEREIGN EXISTENCE WHOSE ARDICA-

TION THE ARMED FORCES WOULD NEVER ALLOW, IT IS CONFIRMED

THAT THE STATE'S PERFORMANCE HAS BEEN WITHIN THE FRAMEWORK OF

THE NORMS ACCEPTED BY CIVILIZED NATIONS.

ALSO REAFFIRMED IS THE BELIEF THAT THIS POLICY WILL

LEAD TO THE EARLY ESTABLISHMENT OF A NEW INSTITUTIONAL

STRUCTURE WITH A DEFINITE CHARACTER WHICH, IN A NEW

REPUBLICAN-DEMOCRATIC SYSTEM, MAY REACH THE FUNDAMENTAL

GOAL OF GENERAL WELL-BEING (IN A CLIMATE OF JUSTICE AND

PEACE, WITH FREEDOM (ACCOMPANIED BY) SECURITY AND DEVELOPMENT.

END QUOTE.

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2. PLEASE PASS THIS TRANSLATION TO MR. BUTLER, WHO WILL
BE IN WASHINGTON TUESDAY APRIL 11.

3. EMBASSY COMMENTS WILL FOLLOW IN SEPTEL.

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